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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

O.A.No. 544 of 2006

Thursday, this the 22nd day of November, 2007

CORAM:

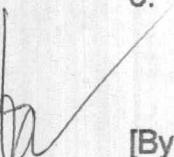
**HON'BLE DR K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE MR TARSEM LAL, ADMINISTRATIVE MEMBER**

Shri K.Ramulu
Residing at : M/s Sai Mini Diary
Door No.20/26, Engineering College Road
Sunkarapeta P.O, Malicherla
Dist Vizianagaram – 3 (Andhra Pradesh) : Applicant

(By Advocate M/s B.S.Tripathy, M.K.Rath & J.Pasi)

v.

1. Union of India represented through the General Manager, East Coast Railway Rail Vihar, At/PO Chandrasekharpur Bhubaneswar, Dist. Khurda
2. The Chief Commercial Manager, East Coast Railway, Rail Vihar, At/PO-Chandrasekharpur, Bhubaneswar, District – Khurda.
3. The Chief Personnel Officer, East Coast Railway, Rail Vihar, At/PO-Chandrasekharpur, Bhubaneswar, District – Khurda.
4. The Divisional Railway Manager, East Coast Railway, Khurda Road, P.O.- Jatni, Dist. Khurda.
5. The Senior Divisional Commercial Manager, East Coast Railway, Khurda Road, P.O. Jatni, Dist. Khurda.
6. The Senior Divisional Personnel Officer, East Coast Railway, Khurda Road P.O. - Jatni, Dist. Khurda. : Respondents

 [By Advocate Mr P.C.Panda, (R1, R3 & R6)]

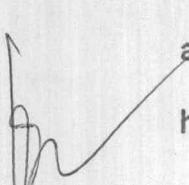
ORDER
HON'BLE DR K.B.S.RAJAN, JUDICIAL MEMBER

The applicant while working as Senior Booking Clerk was issued with a notice dated 22nd November, 2001 giving three months notice for him to retire him from the Railway Service. This was served upon the applicant on 7th December, 2001. The applicant filed a representation on 8th December, 2001. The applicant was to be retired w.e.f. 06-03-2002 vide order dated 02-03-2002 vide Annexure A-3. The order of compulsory retirement was challenged by the applicant through O.A. No. 726/02 and by an interim order, the Tribunal directed the respondents to take the applicant back to duty and by order dated 6th October, 2002 (Annexure A-6), the respondents had allowed the applicant to join duties and the applicant joined duty w.e.f. 9th October, 2002. The said order was made subject to the outcome of the pending O.A. The OA was disposed of by order dated 16th December, 2003 with a direction to the applicant to make representation ventilating his grievances and on receipt of the same, the respondents were to consider the representation. While the applicant had preferred his representation dated 05-01-2004, there was stated to be no response to the same. However, the applicant was subjected to normal superannuation on 31st July, 2005. The applicant penned a representation dated 21-12-2005 for treating the period from 6th March, 2002 to 8th October, 2002 as period spent on duty and has thus claimed pay and allowances. However, the respondents had treated the said period from 6th March, 2002 to 8th October, 2002, as dies non as the applicant remained out of Railway service during that period. Through this OA the applicant had claimed this period to be treated as spent on duty with consequential benefits flowing therefrom.

2. Respondents have contested the O.A. They have admitted the factual

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aspects. One objection made by the respondents is that the applicant in the OA cited two more cases where after premature retirement, the individuals were taken back, their past period of absence was treated as duty. According to the respondents, as in both the orders in the above two cases were issued prior to the expiry of the notice period, the applicant's case is distinguishable from them. It has also been contended that the applicant remained silent for five months after the initial date of retirement in March, 2002 and could approach the Tribunal only in August, 2002.

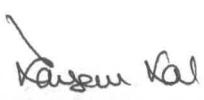
3. Arguments were heard and documents perused. The fact is that though on interim order the applicant was reinstated, thereafter when the OA was disposed of with certain directions and the applicant penned his representations, the respondents did not act on the same. Allowing the applicant to continue till the date of his superannuation was not on the basis of any court's order. It was only of their own accord that the respondents allowed the applicant to continue. This means that the reinstatement and continuance of the applicant till the date of superannuation by the respondents are on merit basis and impliedly the respondents have accepted the representation of the applicant. In that event, it cannot lie in the mouth of the respondents that the applicant is not entitled to pay and allowances for the period from 6.3.2002 to 9.10.2002 when he was kept out of service not on account of any fault by the applicant. The respondents have contended that the applicant came to the Tribunal only after five months of his compulsory retirement. As a matter of fact the applicant filed a representation for consideration by the appellate authority and it was expected that the same could be considered. Since the applicant did not get any response, he had to file the O.A. Thus, it cannot be stated that there has been a delay on the part of the applicant.



4. In view of the above, the O.A. is allowed. The respondents are directed to calculate the pay and allowances due to the applicant for the periods from 6.3.2002 to 9.10.2002 and make available the same to the applicant. This be done within a period of two months from the date of receipt of a copy of this order.

5. No costs.

(Dated, the 22nd November, 2007)


Tarsem Lal
TARSEM LAL
ADMINISTRATIVE MEMBER


DR. K.B.S.RAJAN
JUDICIAL MEMBER